BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

RUSSELL BIRDSALL)
Claimant)
VS.)
) Docket No. 259,090
SHAWNEE MISSION FORD, INC.)
Respondent)
AND	
LIBERTY MUTUAL INSURANCE COMPANY)
Insurance Carrier)

ORDER

Respondent requested Appeals Board review of Administrative Law Judge Julie A. N. Sample's November 27, 2000, preliminary hearing Order.

ISSUES

The Administrative Law Judge granted claimant's request for medical treatment and temporary total disability benefits. On August 8, 2000, claimant suffered burns to his hands while lighting a cigarette on an authorized break. The Administrative Law Judge found that claimant's hand burns were the result of an accidental injury that arose out of and in the course of his employment with respondent.

On appeal, the respondent contends the Administrative Law Judge's preliminary hearing Order should be reversed. Respondent argues that claimant's decision to light a cigarette on a break when his hands were drenched with flammable brake fluid created a personal risk and had no relationship to his employment with respondent. Therefore, the respondent asserts that claimant did not suffer an accidental injury that arose out of and in the course of his employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the parties' briefs, the Appeals Board makes the following findings and conclusions:

The Appeals Board finds the Administrative Law Judge's preliminary hearing Order should be affirmed. The Appeals Board agrees with the Administrative Law Judge's conclusion that claimant suffered an accidental injury that arose out of and in the course

of his employment with respondent. The Appeals Board also agrees with the Administrative Law Judge's reasons and analysis contained in the preliminary hearing Order that support this conclusion. Thus, the Appeals Board finds it is not necessary to repeat the Administrative Law Judge's findings and conclusions in this Order and adopts them as its own.

In particular, the Appeals Board finds claimant was injured while taking a cigarette break authorized by the respondent. The cigarette break is considered analogous to a coffee break and the personal comfort doctrine would control. Thus, when accidental injuries occur while on an authorized break there is not a departure from the employment relationship and the injury is compensable.¹

WHEREFORE, the Appeals Board finds that Administrative Law Judge Julie A. N. Sample's November 27, 2000, preliminary hearing Order should be, and is hereby, affirmed.

IT IS SO ORDERED.
Dated this day of March, 2001.
BOARD MEMBER

c: Roy T. Artman, Lawrence, KS Omid Amjadi, Overland Park, KS Julie A. N. Sample, Administrative Law Judge Philip S. Harness, Director

¹ See Wallace v. Sitel of North America, WCAB Docket No. 242,034 (Oct. 1999).